

appropriate to those areas. The Commission has not proposed to preempt all local regulation; instead, its proposed rule carefully accommodates both the local and federal interests, and establishes the clear guidelines needed by local regulators. With the changes proposed by HNS,<sup>59/</sup> the proposed rule will successfully accommodate local zoning interests while providing for greater access to satellite communications and competition within the industry.

Respectfully submitted,

HUGHES NETWORK SYSTEMS, INC.

By:



James F. Rogers

Steven H. Schulman\*

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August 15, 1995

\*Admitted in Maryland Only

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59. *See Comments of HNS.*



SECTION 12150. CONDITIONAL USES.

A. The following Uses are permitted as conditional Uses in the Commercial (C) Zoning Districts, if approved pursuant to the regulations of this Ordinance concerning conditional Uses and in accordance with the standards and procedures of Chapters 17.06 and 17.08.

1. Antenna Structures (except for private radio or television reception attached to a Building and not exceeding ten (10) feet in height), including a Satellite Earth Station, not exceeding seventy-two (72) feet in height, provided such is used as an Accessory Structure and provided further that the location of the Accessory Structure shall be set back from all Lot Lines a minimum of at least one (1) foot for each foot of height of the antenna Structure;
2. Automobile car washes;
3. Day Care Centers when located on a Lot of at least 2 acres;
4. Gasoline Service Stations;
5. Industrial Uses on land which present industrial Use as owned as of January 1, 1986;
6. Medical offices or Clinics;
7. Nurseries;
8. Private Clubs;
9. Public Utility Facilities;
10. Restaurants;

## **CONDITIONAL USES.**

### **SECTION 6000. STATEMENT OF PURPOSE AND POLICY.**

All conditional Uses may only be authorized by ordinance as described in this section. The Board of Aldermen, subject to the procedures hereinafter set forth, shall have the power to adopt ordinances for conditional Uses allowable within a given zoning District in accordance with the standards set forth herein, provided appropriate conditions and safeguards are imposed to preserve property values and to protect the public welfare as set forth herein.

### **SECTION 6001. STANDARDS FOR CONDITIONAL USES.**

- A. The Board of Aldermen shall not approve any conditional Use permit application, or any amendment to an existing conditional Use permit, which they determine will:
1. Substantially increase traffic hazards or congestion; or
  2. Substantially increase fire, health or any other public safety hazards; or
  3. Adversely affect the visual coherence, predominant usage or Development character of adjacent neighborhoods; or
  4. Adversely affect the general welfare of the community; or
  5. Overtax public utilities, service or other municipal facilities; or
  6. Be developed and operated in a manner that is physically and/or visually incompatible with the permitted Uses in the surrounding areas; or
  7. Substantially increase storm water Drainage on other Lots; or
  8. Create a nuisance.
- B. If the Board determines that the conditional Use permit would not result in the effects described in A above, the Board may impose as conditions to the conditional Use permit, provisions which it determines to adequately safeguard the standards set forth above including, but not

limited to, the following matters:

1. That there is appropriate provision for greenery planting and its maintenance, both for diversion purposes from Streets and also from adjacent properties, which planting may be required to be as high as twelve (12) feet when for the purpose of screening from adjacent properties, and of sufficient width to accomplish the purpose;
  2. That the area or necessary portions thereof are adequately fenced, if determined by the Board of Aldermen to be necessary to prevent unauthorized Persons from having Access to the area, which fencing may be required to a height of six (6) feet;
  3. That there is adequate off-Street parking, taking into account the number of employees and number of members of the public that will be using the area;
  4. That appropriate provision is made for paving all parking and driving areas;
  5. That appropriate provision is made for all sanitary sewerage and stormwater runoff;
  6. That adequate provision is made for off-Street loading;
  7. That adequate provision is made for ingress and egress to Abutting Streets;
  8. That there is adequate area for the intended Use, which area may be greater than the minimum specified in the regulations of the zoning District in which the proposed Use is to be located, and which shall be sufficient to protect all surrounding properties, taking into account all aspects of the intended Use;
  9. That adequate provision has been made for the disposition of refuse and rubbish, garbage, or other materials;
  10. That there is reasonable assurance that the proposed project or Development will be completed, if authorized, and to guarantee such completion a bond may be required.
- C. All conditional Uses, if granted, shall observe and be subject to all other regulations and restrictions otherwise applicable to permitted Uses in the District within which the proposed Use is to be located, unless more stringent requirements are imposed in connection with a condition imposed as part of the granting of the conditional Use.

- D. Duration. Unless otherwise stated, substantial work or construction under a conditional Use permit must be commenced within one (1) year from the date of its approval or within such time extension granted by the Board for good cause shown, or the permit shall terminate.
- E. Initiation. Any property Owner or a duly authorized representative of the property Owner may apply for a conditional Use permit or an amendment to an existing permit.

#### SECTION 6002. APPLICATION FOR PERMIT AND PROCEDURE.

- A. Applications for conditional Use permits shall be in writing which shall apprise the Board of the desired Use of the property proposed to be affected. Application shall be filed with the Board, accompanied by a fee which the Board may prescribe. A separate Application shall be required for each conditional Use within the particular zoning District. The Application shall be accompanied by:
  - 1. Those materials required for Site Plan Review in Chapter 17.07.
  - 2. Optionally, at the applicant's discretion, unless otherwise required by the Planning Commission or the Board, any additional specifications, elevations, or models which they may deem to be necessary to clarify the proposal.
- B. Upon the filing of such Application together with the filing fee, the Director, after determining that the Application is complete, shall refer the matter to the Commission for its recommendations and report, which report shall be delivered in writing to the Board within ninety (90) days after it shall have been received by the Commission. The Director shall simultaneously send a copy of said completed Application to the Board for its information.
- C. Upon the referral of the matter by the Board to the Commission, the Commission shall take the matter under submission and investigate the matter in light of the provisions set forth herein.
- D. Upon the filing of the Commission's report with the Board, or the expiration of said ninety (90) day period if no such report is filed, the Board shall proceed to hold a public hearing in relation thereto at any regular or special meeting of the Board. Fifteen (15) days' notice of the time and place of said hearing shall be published in a newspaper of general circulation in the City. The Board shall, in

addition, give notice by first class mail to the applicant and all property Owners as shown on the tax records of the City within three hundred (300) feet of the boundaries of the Site for which the Application is filed. After such public hearing and upon consideration of any additional facts or information which may be brought before the Board, and in light of the report and recommendations of the Commission, the Board shall decide whether to grant the Application consistent with the provisions of this section, and if so, upon what terms and conditions it deems essential in order to safeguard the matters set forth herein. If the Board shall decide to grant the permit, it shall do so by enactment of an ordinance authorizing the same and setting forth the terms and conditions upon which the permit is granted. If the Application is denied, the applicant shall be informed in writing of the action of the Board. The Board shall prepare written findings of fact and conclusions of law supporting its decision to deny the Application.

- E. Protest. In cases of an adverse report by the Commission, or if a protest against such proposed Conditional Use Permit shall be presented in writing to the City Clerk duly signed and acknowledged by the Owners of ten percent (10%) or more either of the area of the land (exclusive of Streets and alleys) covered by such proposed Conditional Use Permit or within an area determined by lines drawn parallel to and one hundred eighty five (185) feet distance from the boundaries of the property proposed to be covered by the Conditional Use Permit then such proposed Conditional Use Permit shall not become effective except by the favorable vote of three-fourths (3/4) of all members of the Board of Aldermen.
- F. Revocation. A Conditional Use Permit may be revoked upon recommendation of the Director and approval of the Board should the property Owner violate any condition of the Conditional Use Permit, provided, however, that the property Owner was first served with an order to remove the violation and the property Owner failed to comply with the order within ten (10) days of receiving such order and following a notice and hearing held in accordance with subsections D and E above.
- G. Posting of Signs. The Director shall cause a Sign or Signs not less than twenty (20) inches by twelve (12) inches to be placed on each tract of land for which an application for a conditional Use permit has been filed with the City. Said Sign or Signs shall be placed on such land at least fifteen (15) days prior to the public hearing held by the Board and shall be posted in a conspicuous place at a point nearest the Right-of-Way of any Street or roadway Abutting such land so as to be clearly visible to the traveled portion of such Street or roadway. Such Sign shall conspicuously display at least the following information:

PUBLIC HEARING  
APPLICATION FOR ZONING CONDITIONAL USE PERMIT HAS  
BEEN FILED WITH THE CITY OF TOWN AND COUNTRY FOR:  
(nature of application)

PUBLIC HEARING WILL BE HELD ON (Date and Time)

AT (Location)

The Director may provide for such additional information to be placed on any such Sign, and such additional Signs, which would serve to fully inform the public as to the nature of the Application.

- H. Penalty for removal or defacement of Signs. Any Person or Persons, firm, association, or corporation who shall remove, mar, scratch, obliterate or in any manner deface, hide from view or tamper with any such Sign shall be deemed guilty of a violation of this Ordinance, and upon conviction shall be punished as provided for in Section 7004 of this Ordinance relating to Persons who fail to comply with an order of the Director to remove any violation of the Zoning Ordinance.

**SECTION 6003. AMENDMENT PROCEDURE.**

- A. Amendments to Conditional Use Permits shall be in writing which shall apprise the Board of Aldermen of the proposed amendment to the approved Conditional Use Permit. This proposed amendment shall be filed with the Board and accompanied by a fee which the Board shall prescribe. The request for amendment shall also include documentation reflecting the purpose and character of the amendment in a form consistent with that required in Section 6002(A)(1) and (2). The Board shall submit said proposed amendment to the Planning Commission for review and recommendation. The Commission shall then evaluate the request for consistency in purpose and content with the nature of the conditional Use request as originally advertised for public hearing, and approved by the Board.
- B. If the Commission determines that the proposed amendment to the approved Conditional Use Permit is inconsistent in purpose and content with the nature of the conditional Use as originally advertised for public hearing, or with the conditions for approval as contained in the ordinance authorizing said conditional Use, the Commission shall so report to the applicant and the Board. The Commission may, if deemed necessary, recommend to the Board that a new public hearing be held on the matter in accordance with the public hearing procedures set forth in paragraph (D). If



the Board shall decide to grant the permit, it shall do so by enactment of an ordinance amending the original ordinance approving said conditional Use permit and setting forth terms and conditions upon which the amended conditional Use permit is granted. If the Application for amendment to the conditional Use permit is denied, the applicant shall be informed in writing of the action of the Board.

- C. Protest. In cases of an adverse report by the Commission, and a determination by the Commission that a public hearing is required for the amendment of the Conditional Use Permit, or if a protest against such proposed amendment to the Conditional Use Permit shall be presented in writing to the City Clerk duly signed and acknowledged by the Owners of ten percent (10%) or more either of the area of the land (exclusive of Streets and alleys) covered by such proposed amendment to the Conditional Use Permit or of an area determined by lines drawn parallel to and one hundred eighty five (185) feet distance from the boundaries of the property included within the proposed amendment to the Conditional Use Permit then such amendment shall not become effective except by the favorable vote of three-fourths (3/4) of all members of the Board of Aldermen.

**B**

## **DECLARATION OF STEVEN P. d'ADOLF**

1. I, Steven P. d'Adolf, am the Assistant Vice President of Installation Services for Hughes Network Systems, Inc. ("HNS"). As Assistant Vice President of Installation Services, I manage the installation of the approximately 10,000 VSAT antennas installed annually across the country. Since 1988, HNS has installed over 70,000 VSAT antennas, amounting to approximately 228,000 "antenna years" of experience.

2. HNS VSATs are installed with care to ensure that there will be almost no movement, as the antennas must maintain a line of sight with the satellite. Nearly any kind movement of the antenna renders it inoperable. Both customers and installers report any problems with VSAT antenna installations to either me or my staff at HNS. During these 228,000 antenna years, on only two occasions have we been informed that natural forces have moved an HNS VSAT antenna from its installed location. Both of these occurrences involved isolated gusts of extreme force -- one gust, measured at over 200 miles per hour, moved a 727 jetliner on a runway. In neither of these cases did the VSAT antenna fall from the roof, and there were no reports of any injuries.

3. Builder's Square is an HNS customer, with its many nationwide locations connected via VSAT network. Eight Builder's Square stores were located in the path of Hurricane Andrew in Florida. Not one VSAT moved from its installed location on the roofs of these stores, even though an air conditioning unit was ripped away during the storm. In fact, the only HNS antennas to move from their installed locations during Hurricane Andrew were installed atop buildings that were themselves destroyed. Of the many VSATs within Andrew's path, only one even had its line of sight to the satellite disturbed.

4. HNS has built this safety record by maintaining high installation and manufacturing standards. HNS carefully selects, certifies and monitors its local installers. These local installers are typically paid \$35 per hour. In the case of a non-penetrating mount that is secured to a roof by ballast, HNS uses a computer program developed by Reva, Klein & Timmons, a nationally-recognized licensed structural engineer. This program utilizes data from the American National Standards Institute, the Electronic Industry Association, and the National Weather Service to determine the windloading and appropriate ballast. We routinely provide these calculations to local officials when requested.

5. In my experience, local regulations often involve permit processes, variance procedures, and other application requirements with several layers of review, hearings, and notice requirements, all of which has nothing to do with determining the safety of our installations. HNS cannot compete in the marketplace if it cannot quickly install its VSAT antennas.

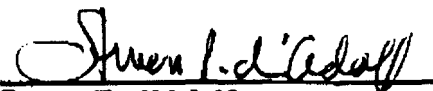
6. Safety inspections need not take several weeks or months. It is not uncommon, for example, for a local official to advise an installer on the day of inspection whether the antenna installation meets the local requirements.

7. Local regulations often involve requirements and procedures that are unnecessary and significantly drive up costs of installation. Screening requirements can be extremely expensive for us, in many cases approaching the cost of the VSAT itself, and in some cases even exceeding these costs. Several customers have told me that the screening actually detracts from the appearance of the installation. Permit and variance processes can also be expensive. For example, Brookline, Massachusetts, required HNS to spend \$1,500 per site to supply the town with site elevation drawings for presentation at a hearing. In

other cases, I have been required to fly across the country to attend hearings personally, even though a local installer was willing to appear for the HNS customer.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 15th day of August, 1995, at Honolulu, Hawaii.

  
Steven P. d'Adolf

## CERTIFICATE OF SERVICE

I certify that I have this 15th day of August, 1995 caused to be delivered by hand the foregoing Reply Comments of Hughes Network Systems, Inc. for preemption of local zoning regulation of satellite earth stations in IB Docket No. 95-59 to the following:

Chairman Reed E. Hundt  
Federal Communications Commission  
1919 M Street, NW, Room 814  
Washington, DC 20554

Commissioner James H. Quello  
Federal Communications Commission  
1919 M Street, NW, Room 802  
Washington, DC 20554

Commissioner Andrew C. Barrett  
Federal Communications Commission  
1919 M Street, NW, Room 826  
Washington, DC 20554

Commissioner Rachelle B. Chong  
Federal Communications Commission  
1919 M Street, NW, Room 844  
Washington, DC 20554

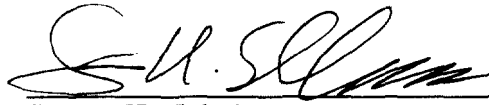
Commissioner Susan Ness  
Federal Communications Commission  
1919 M Street, NW, Room 832  
Washington, DC 20554

Scott B. Harris  
International Bureau  
Federal Communications Commission  
2000 M Street, NW, Room 658  
Washington, DC 20554

Thomas S. Tycz  
International Bureau  
Federal Communications Commission  
2000 M Street, NW, Room 811  
Washington, DC 20554

Fern J. Jarmulnek  
International Bureau  
Federal Communications Commission  
2000 M Street, NW, Room 518  
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Rosalee Chiara  
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2000 M Street, NW, Room 516  
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Steven H. Schulman